

Judge Burgess

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	NO. CR03-5847FDB
)	
Plaintiff,)	
)	
v.)	GOVERNMENT'S SENTENCING
)	MEMORANDUM
PAUL HENRY FAUL,)	
)	
Defendant.)	

I. INTRODUCTION

The United States of America, by John McKay, United States Attorney for the Western District of Washington, and Gregory A. Gruber, Assistant United States Attorney for said District, submits this sentencing memorandum in this case.

Defendant Paul Henry Faul entered a guilty plea to Count 1 of an Information charging him with accessory after the fact in violation of Title 18, United States Code, Section 3 (the underlying offense being Brandon Roemer's possession of an unregistered firearm, to wit: a destructive device (pipe bomb), in violation of Title 26, United States Code, Sections 5841, 5861(d), and 5871). The statutory maximum term of imprisonment for being an accessory after the fact is five years and a \$125,000 fine. The defendant's applicable imprisonment range under the United States Sentencing Guidelines, as correctly calculated in the Presentence Report, is 10-16 months

1 imprisonment. As to defendant Faul, this range falls into Zone C, thereby making him
2 eligible for a split sentence.

3 **II. SENTENCING RECOMMENDATION**

4 As in the case of related case co-defendants Brandon Roemer and Christopher
5 Rietz, the government has wrestled with many competing considerations regarding its
6 sentencing recommendation in this case. Despite the lesser charge to which the
7 defendant pleaded guilty, the government cannot overlook the fact that Mr. Faul
8 participated in the commission of a serious crime in this case -- one that actually caused
9 serious physical injuries to an innocent person.

10 John Henry Hasty, the father of intended property damage victim James Hasty,
11 was seriously injured after he looked out his window at about 1:00 in the morning and
12 saw smoke pouring from beneath his son's truck. In reaching under the vehicle and
13 successfully removing the burning device, he received second degree burns to one arm
14 and suffered from smoke inhalation. These injuries required treatment at the hospital,
15 and resulted in pain and permanent scarring, and loss of wages due to missing some
16 work. Damage to personal property also occurred when the bomb (partially) detonated
17 beneath James Hasty's vehicle, creating additional but unknown financial losses. Mr.
18 Hasty previously spoke to this Court about the emotional and psychological effects the
19 crime took on himself and his family.

20 The government believes that defendant Faul and the others involved in this
21 offense did not intend to cause anyone, certainly John Henry Hasty, any physical
22 injuries. But there can be little doubt that: (1) the defendants did intend that the
23 destructive device cause damage to James Hasty's vehicle, and (2) the damage would
24 have been far worse had all of the pipe bombs exploded. Indeed, it is very easy to
25 imagine a far worse outcome if, for example, the burning napalm mixture had spilled
26 on other parts of John Hasty's body as he worked to remove it from under the vehicle,
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1 or worse, if one of the unexploded pipe bombs had detonated while John Hasty was
2 reaching under the truck.

3 The government agrees with defendant Faul that he “screwed up royally” by
4 being involved in the underlying offense and then lying about it. We also note that
5 Faul has admitted to being one of the two people that took the final steps -- literally --
6 with the bomb. Along with Chris Rietz, it was Paul Faul who carried the pipe bombs
7 to the carport, put the bombs into the napalm-filled cooler, slid all of it under James
8 Hasty’s vehicle, and lit the fuse. As such, Faul was in a somewhat unique position of
9 being able to call the whole thing off at the last possible moment. But while he no
10 doubt now wishes that he had, Mr. Faul did nothing to stop the bombing or minimize
11 the harm done after the fact by quickly admitting his and the others’ complicity when
12 confronted by the authorities.

13 On the positive side, the PSR shows no known criminal convictions. Indeed, it
14 appears as though Mr. Faul has had no previous negative contacts with the police.

15 Taking into account all of the circumstances, however, it does not seem at all
16 unfair that the defendant should serve a short term of incarceration. This is true even
17 when considering the five years’ probation sentence given to Brandon Roemer.¹ But
18 defendant Faul’s term can and should be less than defendant Rietz received.

19 In the PSR, the Probation Officer recommends a split sentence of five months in
20 jail and five months (150 days) on home confinement with electronic monitoring. We
21 believe that sentence to be appropriate in this case, especially when considering the
22 sentences already adjudged regarding Rietz and Roemer.

23 Two things are worth remembering here. Both Rietz and Roemer, though
24 perhaps more culpable, ended up cooperating with authorities. Defendant Faul
25 declined to do so. Second, a split sentence of 10 months represents a huge break from

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27 ¹ The government did attempt to engage the defendant in a proffer session and explored
28 the possibility of cooperation prior to his guilty plea to the accessory charge, but that session
was not fruitful.

1 what he could have faced in this case. Despite his involvement in the bombing itself,
2 he was allowed to plead to a lesser charge of accessory after the fact, which carried
3 only one-half the maximum statutory of term of imprisonment as the underlying
4 offense. He also got the six-level reduction under § 2X3.1 of the Guidelines for being
5 an accessory, down from the bombing base offense level of 18. Moreover, despite his
6 charged conduct being inherently obstructionist in nature, neither the PSR writer nor
7 the government sought the arguably available two-level upward bump. Thus, all things
8 considered, five months in jail for being involved in an injury-causing bombing and a
9 coverup of that crime, is not a particularly hefty sentence.

10 The government would oppose any motion by the defense for an aberrant
11 behavior downward departure in this case. First, Mr. Faul's actions were not a spur of
12 the moment dumb decision brought on by a momentary loss of judgment. An aberrant
13 behavior downward departure requires several things, not the least of which are that the
14 offense cannot involve serious injury or have involved the use of a firearm or a
15 dangerous weapon. USSG § 5K2.20. Mr. Hasty's second-degree burns were a serious
16 injury caused by the detonation of a pipe bomb which the law defines as both a
17 "firearm" and a "destructive device" (the latter of which should qualify as a
18 "dangerous weapon").

19 An aberrant behavior departure should also be limited to an act constituting a
20 "single criminal occurrence or single criminal transaction that (A) was committed
21 without significant planning; (B) was of limited duration; and (C) represents a marked
22 deviation by the defendant from an otherwise law-abiding life." USSG § 5K2.20,
23 comment. (n.1) (emphasis added). Clearly, defendant fails to establish either
24 requirement A or B of Application Note 1.

25 The bombing was planned over the course of an entire day and night. Rietz and
26 Roemer spent a few hours going to several places around Kelso and Longview to gather
27 the ingredients for the bombs and the napalm mixture. Even assuming that defendant
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1 Faul had no inkling of Rietz and Roemer's plans during their shopping spree, his
2 conduct from the time he admits seeing the bomb in Rietz's garage (shortly after his
3 10:00 p.m. arrival) spanned well over three hours: piling into a truck and driving to
4 the Hasty residence (while two of them held the bomb and a large cooler full of napalm
5 made primarily of a smelly gasoline mixture), through he and Rietz getting out and
6 setting and lighting the bomb, to all of them driving back to Rietz's house and
7 discussing their alibis and agreeing to a story in case any of them were ever questioned.
8 But that three-hour time span does not include, of course, the six additional days before
9 he was questioned by ATF agents on April 7th and made his false statement that was
10 the basis of his guilty plea in this case. Thus, there was planning involved, and
11 defendant Faul's conduct was not limited in duration.

12 As to the remainder of the sentence, the nature of this crime suggests that a
13 maximum term of supervised release of three years is appropriate and would be wise.
14 Restitution must also be ordered in this case, and defendant Faul should be jointly and
15 severally liable for the entire amount of \$2,791.92 (for John Hasty's medical insurance
16 deductible and lost wages from missing work, and to reimburse his insurance
17 company). The relatively minor damage to James Hasty's truck was not professionally
18 repaired, so the PSR does not quantify a dollar loss for it. The government does not
19 seek a fine, but the mandatory penalty assessment of \$100 should be made due and
20 payable immediately.

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1 Finally, the government does not object to defendant Faul being allowed to self-
2 surrender for the service of the incarceration portion of his sentence.

3 Dated this 24th day of May, 2004.

4 Respectfully submitted,

5 JOHN McKAY
6 United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 24, 2004, I electronically filed the Government's Sentencing Memorandum with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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